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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/757,853      | 01/13/2004  | Wolfram Langer       | KRYO-00400          | 4610             |

28960 7590 02/02/2006  
HAVERSTOCK & OWENS LLP  
162 NORTH WOLFE ROAD  
SUNNYVALE, CA 94086

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| EXAMINER |
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MOHANDESI, JILA M

|          |              |
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| ART UNIT | PAPER NUMBER |
|----------|--------------|

3728

DATE MAILED: 02/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                               |                                 |  |
|------------------------------|-------------------------------|---------------------------------|--|
| <b>Office Action Summary</b> | Application No.<br>10/757,853 | Applicant(s)<br>LANGER, WOLFRAM |  |
|                              | Examiner<br>Jila M. Mohandesi | Art Unit<br>3728                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 January 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities: Under the Brief Description of the Drawings: Brief description of Figure 4c is missing.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 6-10, 15-20, 24-28 and 34-37 are rejected under 35 U.S.C. 102(b) as being anticipated by Warner et al. (2,630,912). Warner '912 discloses an apparatus for resisting the growth and spread of contaminants, the apparatus comprising: a brush (20) including a handle portion, wherein the handle portion is fashioned from a contaminant resistant material; at least one end cap (resilient cover 16) including an aperture (socket 18), wherein the aperture is fashioned to receive the handle portion of the brush; and an enclosure including at least one opening, wherein the at least one end cap is fashioned to close the at least one opening, and further wherein when the handle portion of the brush is inserted into the aperture and the at least one end cap is inserted into the at least one opening, the brush in entirety within the enclosure and configured such that the brush is not in contact with an inner surface of the enclosure.

See Figures 1-4 embodiments.

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4. Claims 1, 6-10, 15-20, 24-28 and 34-37 are rejected under 35 U.S.C. 102(b) as being anticipated by Thompson (2,177,504). Thompson '504 discloses an apparatus for resisting the growth and spread of contaminants, the apparatus comprising: a brush (18) including a handle portion, wherein the handle portion is fashioned from a contaminant resistant material; at least one end cap (resilient cover 12) including an aperture (slot 26), wherein the aperture is fashioned to receive the handle portion of the brush; and an enclosure including at least one opening, wherein the at least one end cap is fashioned to close the at least one opening, and further wherein when the handle portion of the brush is inserted into the aperture and the at least one end cap is inserted into the at least one opening, the brush in entirety within the enclosure and configured such that the brush is not in contact with an inner surface of the enclosure. See Figures 1-4 embodiments.

5. Claims 1, 6-7, 9-10, 15-16, 18-20, 24-25, 27-29, 34-35 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Couch et al. (5,992,617). Couch '617 discloses an apparatus for resisting the growth and spread of contaminants, the apparatus comprising: a brush including a handle portion, wherein the handle portion is fashioned from a contaminant resistant material; at least one end cap (resilient cover 70 or 80) including an aperture (implement holding sleeve 74), wherein the aperture is fashioned to receive the handle portion of the brush; and an enclosure including at least one opening, wherein the at least one end cap is fashioned to close the at least one opening, and further wherein when the handle portion of the brush is inserted into the aperture and the at least one end cap is inserted into the at least one opening, the

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brush in entirety within the enclosure and configured such that the brush is not in contact with an inner surface of the enclosure. See Figures 7-8 embodiments.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 2, 5, 11, 14, 21, 23, 30, 33 and 38-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over either one of Warner '912 or Thompson '504. Each of Warner '912 and Thompson '504 as described above disclose all the limitations of the claims except for the specific material of the handle portion of the brush. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the material of the handle portion of the brush, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

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Claims 38-45 are directed to the obvious method of producing the apparatus of either one of Warner '912 or Thompson '504.

9. Claims 2-5, 8, 11-14, 17, 21- 23, 26, 30- 33, 36 and 38-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Couch '617. Couch '617 as described above discloses all the limitations of the claims except for the specific material of the handle portion of the brush and the enclosure. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the material of the handle portion of the brush, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

With respect to claims 3, 12, 22, 31 and 46, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the handle of the brush from an upper handle portion and a lower handle portion, since it has been held that constructing a formally integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

With respect to claims 4, 13, 22, 32 and 46 note the brush in figures 7 and 8 wherein a set of bristles are coupled to the upper handle portion of the brush with a crimp.

Claims 38-45 are directed to the obvious method of producing the apparatus of Couch '617.

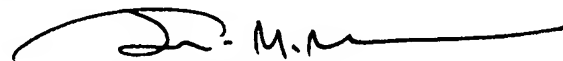
***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown are apparatus analogous to applicant's instant invention.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jila M. Mohandesi whose telephone number is (571) 272-4558. The examiner can normally be reached on Monday-Friday 7:30-4:00 (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jila M Mohandesi  
Primary Examiner  
Art Unit 3728

JMM  
January 31, 2006